

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

TIMOTHY CLEMENS,

Plaintiff,

v.

**CIVIL ACTION NO. 1:09CV94
(Judge Keeley)**

**MICHAEL J. ASTRUE, COMMISSIONER
OF SOCIAL SECURITY**

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. §636(b)(1)(B), Fed.R.Civ.P. 72(b), and L.R. 4.01(d), on July 7, 2009, the Court referred this Social Security action to United States Magistrate Judge John S. Kaull with directions to submit proposed findings of fact and a recommendation for disposition.

On March 2, 2010, Magistrate Judge Kaull filed his Report and Recommendation ("R&R"), and directed the parties, in accordance with 28 U.S.C. §636(b)(1) and Fed.R.Civ.P. 6(e), to file with the Clerk of Court any written objections within ten (10) days following receipt of a copy of the R&R. He further directed the parties that failure to file objections would result in a waiver of the right to appeal from the judgment of this Court. The parties did not file any objections.

Upon consideration of Magistrate Judge's recommendation and having received no written objections,¹ the Court accepts

¹ Clemens' failure to object to the Report and Recommendation not only waives his appellate rights in this matter,

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Magistrate Judge Kaull's R&R in whole and **ORDERS** that this civil action be disposed of in accordance with the recommendation of the magistrate judge. Accordingly, the Court

1. **GRANTS** the Commissioner's motion for Summary Judgment (dkt. no. 12);
2. **DENIES** the plaintiff's motion for Summary Judgment (dkt. no. 10); and
3. **DISMISSES WITH PREJUDICE** and **RETIRES** this civil action from the docket of this Court.

Pursuant to Fed.R.Civ.P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of this Order to counsel of record.

DATED: April 2, 2010.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

but also relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).